

STATE OF MICHIGAN
COURT OF APPEALS

RODGERICK BOOTH,

Plaintiff-Appellant,

v

DEPARTMENT OF CORRECTIONS,

Defendant-Appellee.

UNPUBLISHED

October 6, 2009

No. 287718

Alger Circuit Court

LC No. 08-004716-CZ

Before: Murray, P.J., and Markey and Borrello, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition. For the reasons set forth in this opinion, we affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Plaintiff, a prisoner in a state correctional facility, filed a pro se complaint alleging violations of his constitutional rights and requesting money damages. Plaintiff's complaint asserted that his due process rights and rights to be free from cruel or unusual punishment were violated when a major misconduct report was entered against him. The major misconduct report stated that plaintiff stood on his rolled up mattress and exposed his genitals to a corrections officer.

Plaintiff asserts that the major misconduct report was fabricated against him in retaliation for claims he filed in federal court against the corrections officer. Plaintiff also asserts that the hearing officer and others involved in the investigation and resulting sanctions were biased against him and, as a result, suppressed evidence that would have allowed him to defend against the major misconduct charge. Plaintiff was found guilty of the major misconduct and was placed on mattress restriction, which he claims was cruel and unusual punishment. Plaintiff's request for a rehearing was denied. Similarly, plaintiff's grievances concerning the mattress restriction were also denied at all stages. Plaintiff did not seek judicial review of the finding that he was guilty of the major misconduct violation; rather, he brought this claim for violations of his civil rights.

This Court reviews de novo both constitutional issues and a trial court's grant of summary disposition. *Proctor v White Lake Twp Police Dep't*, 248 Mich App 457, 461; 639 NW2d 332 (2002).

According to Michigan statute, when a prisoner is found guilty of a major misconduct, that prisoner does not earn good time, disciplinary credit that otherwise would have been earned in the month of the major misconduct. MCL 800.33. “Accumulated disciplinary credits shall be deducted from a prisoner’s minimum and maximum sentence in order to determine his or her parole eligibility date and discharge date.” MCL 800.33(3), (5). Therefore, when a prisoner is found guilty of a major misconduct, that prisoner’s minimum and maximum sentences are affected. MCL 800.33(5).

An action under 42 USC 1983 (“§ 1983”) provides a remedy against any person who, under color of state law, deprives another person of his or her constitutionally protected rights. *Davis v Wayne Co Sheriff*, 201 Mich App 572, 576-577; 507 NW2d 751 (1993). Section 1983 provides a remedy for deprivation of rights created by other laws, but it does not create any substantive rights itself. *Id.* To state a cause of action under § 1983, a plaintiff must show (1) that he was deprived of a federal right, and (2) that the defendant deprived him of that right while acting under color of state law. *Id.*

A § 1983 claim is not cognizable if the plaintiff’s claim for damages bears a relationship to the conviction or the punishment imposed that would imply the invalidity of the conviction or punishment. *Heck v Humphrey*, 512 US 477, 487; 114 S Ct 2364; 129 L Ed 2d 383 (1994). To recover damages for harm caused by actions whose unlawfulness would necessarily render a conviction or sentence invalid, the § 1983 plaintiff must prove that the conviction or sentence has been overturned. *Id.*, 512 US 486-487.

Those § 1983 principles have also been applied to prison disciplinary decisions and the resulting sanctions. See *Edwards v Balisok*, 520 US 641; 117 S Ct 1584; 137 L Ed 2d 906 (1997). In *Balisok*, an inmate requested damages for deprivation of good-time credits without due process. *Id.* at 520 US 645. The inmate claimed that the procedures were wrong, but he did not necessarily claim that the result was wrong. *Id.* Further, the inmate claimed that deceit and bias caused the exclusion of exculpatory evidence. *Id.* at 647. The *Balisok* Court found that if the procedural defects complained of were established, then the resulting sanctions—the deprivation of good-time credits—would be impliedly invalid. *Id.* at 646.

A criminal defendant tried by a partial judge is entitled to have his conviction set aside, no matter how strong the evidence against him. The due process requirements for a prison disciplinary hearing are in many respects less demanding than those for criminal prosecution, but they are not so lax as to let stand the decision of a biased hearing officer who dishonestly suppresses evidence of innocence. [*Id.* at 647 (internal citations omitted).]

The *Balisok* Court concluded that the inmate’s § 1983 claims for declaratory relief and money damages were not cognizable “based on allegations of deceit and bias on the part of the decision maker that necessarily imply the invalidity of the punishment imposed.” *Id.* at 648.

Similarly, plaintiff in the present case seeks only money damages and challenges the procedures used to find him guilty of the major misconduct. Plaintiff alleges retaliation and bias led to the fabricated misconduct charge and suppression of evidence that would have allowed him to present a defense.

Plaintiff's § 1983 claim is not cognizable because his due process claim alleging bias that caused suppression of evidence, if upheld, would imply the invalidity of the underlying major misconduct charge and the resulting sanctions thereof including the loss of good time, disciplinary credits. *Balisok, supra* at 520 US 647-648; MCL 800.33. Because plaintiff never challenged the major misconduct violation in a judicial forum, it stands as valid. Therefore, plaintiff does not have a cognizable claim under § 1983.

Affirmed.

/s/ Christopher M. Murray

/s/ Jane E. Markey

/s/ Stephen L. Borrello